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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

LEONARD R. KAHN,

Petitioner,

v.

GENERAL MOTORS CORPORATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

PETITIONER'S SUPPLEMENTAL BRIEF

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PETITIONER'S SUPPLEMENTAL BRIEF

THE COURT SHOULD DEFER AND CONSIDER THIS PETITION AT THE SAME TIME AS THE PETITION FOR A WRIT OF CERTIORARI TO THE FEDERAL CIRCUIT IN *HERSTEIN V. COMPTEK FEDERAL SYSTEMS, INC., AND MICROKIM, LTD.*

On May 18, 2000, the United States Court of Appeals for the Federal Circuit affirmed the district court's grant of summary judgment on noninfringement in *Dov Herstein, (plaintiff-appellant) v. Comptek Federal Systems, Inc., and MicroKim, Ltd. (defendants-appellees) (Appeal no. 99-1104).*[1] Mr. Herstein, who is represented by the same attorney who represents the Petitioner in this case, intends to file a timely Petition for Certiorari to the United States Court of Appeals for the Federal Circuit. One of the central issues in the *Herstein* Petition will be the Federal Circuit's failure to award appropriate sanctions for defendants' and their attorney's fraud on the court. That is at least a very similar issue -- if not identical issue -- presented by the instant Petition.

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[1] The Petition in this case was filed on May 2, 2000.

A week prior to the May 18th decision, the Federal Circuit issued, inter alia, two separate orders denying plaintiff-appellant's motions for Leave to Supplement the Record In Order To Bring Newly Discovered Evidence to [The Federal Circuit's] Attention and Prevent an Injustice and Fraud on [The Federal Circuit] and Against Appellant, and a Motion for Sanctions. Both motions were premised on the deliberate misrepresentation to the Federal Circuit by appellees and their attorney based on the attorney falsely certifying that **"all of the conductor connections were soldered"** after he personally studied the accused device. [2]

During the appeal, the plaintiff inventor, Dov Herstein, obtained a Declaration from a former employee of MicroKim Ltd. which was filed in support of plaintiff's motions and established that in order to make a microwave component [VCO Block] field replaceable, its connection to the conductor was **not soldered**. That Declaration proved that the attorney's representation was false. Defendants and their attorney never disputed the accuracy of the statements by the former employee. The defendants benefited from one of the major features of the invention -- the ease of connection and disconnection of microwave components such as the VCO block. The newly

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[2] The defendants had misrepresented the same fact to the district court which rendered its decision based on that purported fact; plaintiff first discovered the misrepresentation during the appeal.

discovered evidence -- exposing the fraud -- was clearly material and indeed may be dispositive.

Accordingly, the Court should seriously consider granting both petitions and consolidating them for argument. The cases present complementary issues of appropriate sanctions where there is a scheme to practice a fraud on the court with the complicity of a party's attorneys.

These cases present the Court with an opportunity to once again reiterate the importance of integrity and honesty owed to the Court by an attorney as an officer of the Court. The departure here from that exacting standard in the conduct of a case perpetrates a fraud on the court.

CONCLUSION

The Court should defer consideration of this Petition until the *Herstein* Petition is filed so both may be considered simultaneously.

Respectfully submitted,

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